

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

RULE AMENDMENTS GOVERNING) Administrative Cause
SPECIAL BOATING ZONES ON) Number 13-201L
SIMONTON LAKE, 312 IAC 5-6-11) (LSA Document #14-296(F))

**REPORT ON RULE PROCESSING, CONSIDERATION OF PUBLIC COMMENTS,
ANALYSIS AND RECOMMENDATION REGARDING FINAL ADOPTION**

1. RULE PROCESSING

For consideration is a proposal to add 312 IAC 5-6-11 establishing a special boating zone on Simonton Lake located in Elkhart County. This rule proposal results from a Petition for Rule Change submitted to the Natural Resources Commission ("*Commission*") by the Simonton Lake Area Homeowners Association ("*SLAHA*") following consideration by its "Ecozone Committee".

SLAHA and its Ecozone Committee began seeking guidance on the establishment of the boating zone as early as June 2012 following the completion of a Lake Diagnostic Feasibility Study in 2011. One of the recommendations of the Lake Diagnostic Feasibility Study was the establishment of the boating zone, referred to as an "ecozone", as authorized by Indiana Code § 14-15-7-3, for the purpose of protecting wetlands, marshes and shallow areas within the lake from motorized watercraft. SLAHA sponsored an educational meeting on August 15, 2012 at which Doug Keller ("*Keller*") , Aquatic Habitat Coordinator for the Department of Natural Resources, participated , provided information and responded to inquiries. At that meeting, Keller explained that;

There are a number of reasons for establishing an ecozone.

- There are safety issues for boats running in shallow water.
- Vegetation is important to water quality.
- Water quality is also affected by the limiting the re-suspension of nutrients. This re-suspension is caused by boat motors stirring up the bottom of the lake.
- Finally, ecozones provide a quieter area for paddlers and fishermen.

However, Keller also advised SLAHA that “ecozones are not meant to be a means for one person to keep others out their little corner of the lake.” *SLAHA “Minutes of Public Meeting” August 15, 2012.*

After additional meetings of the Ecozone Committee, the publication of information for Simonton Lake area property owners as well as presentations to the SLAHA Board of Directors, the Ecozone Committee and SLAHA submitted its proposal to the Department of Natural Resources (“*Department*”) and the Commission on August 28, 2013. The proposal provided a legal description for the area to be included within the boating zone, which for purposes of the proposed rule have been identified by coordinates as set forth in subsection (b).

In accordance with a Nonrule Policy Document established by the Commission as Information Bulletin #7 (Third Amendment), *Petitions for Rule Change and for Nonrule Policy Document Change*, posted at <http://www.in.gov/legislative/iac/20111005-IR-312110580NRA.xml.pdf> a Department committee consisting of Keller, as the chair, with the assistance of James Hebenstreit from the Division of Water and Lt. Kenton Turner, from the Division of Law Enforcement, reviewed the merits of SLAHA’s petition. The Department’s Committee determined that the establishment of the boating zone was appropriate.

Executive Order 13-03 requires agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the Indiana *Register* on or before January 14, 2013.” Additional compliance provisions were included in Financial Management Circular 2013-01. Cameron Clark, Director of the Indiana Department of Natural Resources (“DNR”) submitted to the Office of Management and Budget (“OMB”) a request for an exception to the suspension of rulemaking action under the provisions of Executive Order 13-03 on April 30, 2014. In a letter dated May 7, 2014, Christopher D. Atkins, Director, Office of Management and Budget, wrote that DNR’s “request qualifies for an exception under Section 6(g) of Executive Order 13-03. Therefore, DNR may proceed...”. The proposed rule was granted preliminary adoption by the Commission on July 15, 2014.

The “Notice of Intent” to adopt the proposed rule amendment was posted to the INDIANA REGISTER database website as 20140730-IR-312140296NIA on July 30, 2014. The notice identified Keller as the “small business regulatory coordinator” for purposes of Indiana Code § 4-22-2-28.1.

The Commission caused the information required by I.C. 4-22-2-22.5 to be included within the rulemaking docket maintained on its Internet website. The rulemaking docket is updated throughout the rule adoption process.

Following the posting of the Notice of Intent, fiscal analyses of the rule proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to the Office of Management and Budget on August 4, 2014 as specified by Executive Order 2-89 and Financial Management Circular 2010-4. The material was also submitted to the Legislative Council. In a letter dated August 27, 2014, Brian E. Bailey, Director, Office of Management and Budget, recommended that the proposed rule amendments be approved.

The NRC Division of Hearings submitted the rule proposal to the Legislative Services Agency (LSA) along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”) on September 9, 2014. The Notice of Public Hearing was submitted to LSA on September 11, 2014. The Notice of Public Hearing was posted to the INDIANA REGISTER database website on September 24, 2014 as 20140924-IR-312140296PHA along with the Economic Impact Statement (20140924-IR-312140296EIA) and the text of the proposed rule (20140924-IR-312140296PRA). Following receipt of an “Authorization to Proceed” from LSA on September 11, 2014, the NRC Division of Hearings also caused a Notice of Public Hearing to be published by the Elkhart Truth, a newspaper of general circulation in Elkhart County, Indiana, on September 19, 2014. In addition, notice of the public hearing and a summary of the proposed rule changes were published on the NRC’s web-based electronic calendar.

2. REPORT OF PUBLIC HEARING AND COMMENTS

a) Public Hearing Comments

A public hearing was conducted at the Sportsman's Club in Elkhart, Indiana on October 23, 2014 as scheduled. Sandra Jensen served as the hearing officer. Doug Keller participated on behalf of the Department. Six members of the public participated and a summary of the oral comments received at the public hearing has been attached and incorporated by reference at Exhibit A.

b) Comments Received Outside Public Hearing

An opportunity was provided for the public to submit written comments from approximately July 30, 2014 until October 23, 2014. Written comments were received through the Commission's online comment form. These comments have been reproduced, attached and incorporated by reference at Exhibit B.

c) Response by the Department of Natural Resources

All of the public comment received with respect to the proposed rule is favorable. The Department was without reason to offer a written response.

3. ANALYSIS AND RECOMMENDATION

For consideration is a proposed new rule that will prohibit the operation of a boat with other than with an electric trolling motor or paddle in a designated area in the southeast corner of the east basin of Simonton Lake. Boats will also be prohibited from anchoring within this area.

Based upon personal observation from an August 2012 site visit, Keller explained to the Commission on July 15, 2014 when the rule was considered for preliminary adoption, that;

The proposed ecozone is approximately ten acres and is located in the southeast portion of Lake Simonton. ... The area is extremely shallow (three feet deep or less) with a fair amount of emergent and submerged vegetation. Despite the shallow and vegetated nature, motorboats and personal watercraft commonly utilize the area, which damages aquatic habitat and suspends nutrients and sediment. The shallow nature of the area also offers a boating hazard. The shoreline bordering the zone consists of undeveloped shoreline and mostly wetlands. There are no residential areas that would be "boxed-in" as a result of the proposed ecozone.

Natural Resources Commission, July 15, 2014 Meeting Minutes.

The membership of the Department's committee that determined public safety would be enhanced by the establishment of the boating zone included Lt. Kenton Turner, a representative of the Division of Law Enforcement.

The area included within the proposed special boating zone must be identified with buoys provided to SLAHA by the Department. The proposed rule provides that in order to be effective and enforceable the boating zone must be identified by the buoys, which must be installed by SLAHA. SLAHA representatives acknowledge having been notified of this requirement and expressed acceptance of the responsibility to install (and remove) the buoys in accordance with 312 IAC 5-4.

The proposed rule also provides for expiration on January 1, 2021. The establishment of this "sunset" date will allow for SLAHA and the Commission to review the impacts of the rule at a future time.

The Department is in favor of the adoption of this rule as presented and public input associated with the establishment of the proposed boating zone is entirely favorable.

The addition of 312 IAC 5-6-11 as proposed and attached and incorporated by reference at Exhibit C, is recommended for final adoption without revision.

Dated: October 29, 2014

Sandra L. Jensen
Hearing Officer

EXHIBIT A

PUBLIC HEARING COMMENT SUMMARY

The following six members of the public attended the public hearing conducted October 23, 2014:

Ginny Bellamy; Elkhart, Indiana
Larry Bellamy; Elkhart, Indiana
Joe Arredondo; Elkhart, Indiana
Vaugh Nickell; Elkhart, Indiana
Steve Wogoman; Elkhart, Indiana
Bob Evans; Elkhart, Indiana

Each person in attendance offered support for the proposed rule.

Additional discussion occurred during the public hearing with respect to the verbage that would be included on the buoys provided to SLAHA by the Department. Sandra Jensen offered to provide a copy of 312 IAC 5-4, which relates to the placement of buoys, as well as contact information for the Lt. Kenton Turner, for the purpose of facilitating future discussion about this subject matter. The information was provided by email to Amy Matherly (SLAHA Ecozone Committee Chair) on October 24, 2014.

Mr. Evans, Mr. Wogoman and Mr. Nickell expressed interest in providing signage at the Department's public access site describing the boating zone's restrictions and purpose as well as providing a boundary outline of the boating zone. Keller explained that he would coordinate with the Division of Fish and Wildlife with respect to the desired signage.

EXHIBIT B

PUBLIC COMMENT

Simonton Lake Boating Zone

LSA # 14-296

<p>Commenter Name Amy Matherly City Elkhart County ELKHART State Indiana Organization (optional) Simonton Lake Ecozone Committee E-Mail Address ramatherly@gmail.com Comments In 2011 a water quality feasibility study was done at Simonton Lake. One of the recommendations was the establishment of an ecozone. We have the perfect place for the ecozone at the southeast corner of the small basin. This area of the lake leads onto marshland. No homes would have water access restricted by the zone. We have great support for the ecozone at Simonton Lake from lake residents. Comment Received 9/17/2014 9:39:44 PM</p>
<p>Commenter Name Steve Wogoman City Elkhart County ELKHART State IN E-Mail Address swogo@yahoo.com Comments It is my opinion that the establishment of this Eco Zone can make only good benefits for Simonton Lake. As laid out it will be 'out' of normal boating areas due to the shallowness of the water level within the 'zone' area. With a bit of luck the lake should benefit in years to come. Comment Received 9/18/2014 9:50:31 AM</p>
<p>Commenter Name Larry & Ginny Bellamy City Elkhart County ELKHART State Indiana E-Mail Address lgbellamy@msn.com Comments The Ecozone will provide a protection for the wildlife on Simonton Lake. By the establishment of boating regulations in the Ecozone area we will additionally assist protection(s). We are happy to be residents on this lake and appreciate all that our Simonton Lake Area Homeowners Association is doing for the preservation of our lake & wildlife. Comment Received 9/18/2014 11:41:32 AM</p>
<p>Commenter Name Vaughn Nickell City Elkhart County ELKHART State IN Organization (optional) Simonton Lake Area Homeowners Assoc E-Mail Address vlnickell@gmail.com Comments This is a great opportunity to improve the health of our Lake and improve habitat for our fish and wildlife. We had a Diagnostics study completed in 2010 that recommended this effort. Our lake is 301 acres with 43,170 feet of shoreline which results in a 3.6 : 1 development ratio. The depth of water in the proposed eco-zone is extremely shallow and not conducive to boating anyway. The property adjacent to the proposed eco-zone is almost all wetland and undevelopable so few (if any) property owners will be inconvenienced. Comment Received 9/19/2014 9:50:58 AM</p>
<p>Commenter Name LeAnn Gregpru City Elkhart County ELKHART State IN E-Mail Address leann.gregory1@gmail.com Comments I am totally in favor of this. I like on the lake and enjoy the beauty and peaceful nature of this area. I kayak there. Comment Received 9/19/2014 12:19:13 PM</p>
<p>Commenter Name John Lendman Sr. City Elkhart County ELKHART State Indiana E-Mail Address lendman@comcast.net Comments My name is John Lendman Sr. and I am a resident of Simonton Lake. We need this rule due to the fact the Environmental Zone we are trying to create at our lake needs it. That area of Simonton Lake is where fish lay their eggs, birds fly and animals come and go. This rule will help preserve that. There is nothing more beautiful than that area of the lake in the early morning and evening than to see the wildlife and vegetation grow. This rule will help our lake grow in fishing, wildlife and water clarity. Simonton Lake is the biggest lake in Elkhart County and we want to make it the most beautiful. Please pass this rule. Thanks, John Lendman Sr. Comment Received 9/19/2014 2:41:04 PM</p>
<p>Commenter Name Jerald R. Broderick City Elkhart County ELKHART State Indiana Organization (optional) Simonton Lake Association</p>

E-Mail Address grbroderickdc@gmail.com

Comments I am in favor of and support the Eco-Zone in the South East portion of Simonton Lake, (Small lake East of the larger portion of Simonton Lake).

Comment Received 9/19/2014 4:46:24 PM

Commenter Name ward

City elkhart **County** ELKHART **State** IN

Organization (optional) SLAHA

E-Mail Address sckjward@comcast.net

Comments The eco are is necessary to help improve the quality of the lake. It will provide a safe area for wildlife. Of course no motors should be allow within its boundaries.

Comment Received 9/21/2014 12:42:32 PM

Commenter Name Maria Hopman

City Elkhart **County** ELKHART **State** In

E-Mail Address mariaseifdrug@aol.com

Comments I believe this is a good proposal. We need a area that is "quiet" for the wildlife on the lake. Also a wetland area is always good for the lake to thrive. Thank You, Maria Hopman

Comment Received 10/4/2014 5:28:40 PM

EXHIBIT C

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #14-296

Adds 312 IAC 5-6-11 to establish a special boating zone on Simonton Lake located in Elkhart County. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

312 IAC 5-6-11

SECTION 1. 312 IAC 5-6-11 IS ADDED TO READ AS FOLLOWS:

312 IAC 5-6-11 Simonton Lake; special boating zones

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14; IC 32-19-1-1

Sec. 11. (a) This section establishes a special boating zone in Elkhart County on Simonton Lake.

(b) A person must not operate a boat with other than an electric trolling motor or paddle in an area in the southeast corner of the east basin of the lake bounded by buoys designating the boundary of the restricted zone:

(1) beginning on shore at SPC 2367635.632 (UTM 4622323) north and SPC 251603.940 (UTM 587556) east which is immediately south of Lot #12 of the Dawns Edge Subdivision;

(2) continuing in a northwest direction to the point at SPC 2367945.962 (UTM 4622414) north and SPC 250981.110 (UTM 587365) east;

(3) continuing in a westerly direction to the point at SPC 2367511.934 (UTM 4622280) north and SPC 250586.145 (UTM 587246) east; and

(4) then following the southern shoreline in an easterly direction to the point of beginning identified in subdivision (1).

(c) Boats may not anchor within this zone.

(d) In order to be effective, a zone established under this section must include buoys placed on site under 312 IAC 5-4.

(e) The coordinates used in subsection (b) have the meaning set forth in IC 32-19-1-1, 312 IAC 1-1-27.5, and 312 IAC 1-1-29.3 and referenced as "SPC" and "UTM".

(f) This section expires January 1, 2021.

(Natural Resources Commission; 312 IAC 5-6-11)

Notice of Public Hearing